1950

File No. Civ A+A
Motor Transport
50 Pt I

Examined

Legal Department

A Branch

Subject:- Civil Appeal and Applications regarding Motor Transport.

(For subsequent papers see Part II)

12.5

Civ. A+A Motor Transport/50
Part I

502-B

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY AND INHERENT JURISDICTION.

Misc. No. 285 of 1960.

In the matter of Motor Vehicles Act 1939 Motor Vehicles(Bombay Amendment) Act 1947.

And

The Road Transport Corporation Act of 1948.

The Chikodi Motor Transport Co.)
Chikodi, a firm Registered under)
the Indian Partnership Act 1932)
and having its office at Chikodi)
District Belgaum.....) Petitioner

Versus.

1. The State of Bombay.
2. The Provincial Transport)
Officer, of the Government of)
Bombay having his office at)
Churchgate Bombay....)
3. The Regional Transport)
Authority Karnatak Region)
Belgaum being a body constituted)
under the Motor Vehicles Act)
1939.....) Respondents.

3-4

To.

The Hon'ble Chief Justice and the Other Judges
of this Hon'ble Court.

THE HUMBLE PETITION OF THE PETITIONERS ABOVENAMED.
HUMBLY SHEWETH:-

1. The Petitioners are a partnership firm registered under Indian Partnership Act 1932 and having its office at Chikodi in District Belgaum. Respondents Nos. 2 is the officer of Respondents No. 1 in charge of the administration of the Motor Vehicles Act 1939 and Respondents No. 3 is the authority--- constituted under the said Act.

2. Prior to 1943 several persons carried on business of plying Motor buses for carriage of passengers on different routes in the southern part of State of Bombay. Acting under the directions given from time to time by the authorities administering the Motor Vehicles Act 1939 (hereinafter referred to as the said Act') the said persons firstly formed themselves into a Union and thereafter in the year 1943 promoted the Petitioners firm with themselves as its partners for the purposes of conducting the said usiness of passenger transport and for taking over the said serveral businesses of Motor Transport carried on by them. The Petitioner's took over the said businesses and have been carrying on the business of Motor Transport on different routes in the southern part of the State of Bombay. All the partners of the Petitioners are domicile citizens of India.

3. After the businesses were taken over by the Petitioners as aforesaid the petitioners were granted Stage Carriage Permit No. P.St.S. 146(1-18) by the authorities under the said Act of a duration contemplated by Section 58 of the Act and the said Permit was renewed to the Petitioners under section 58 sub-clause 2 and the duration of the last such renewed permit expired on 6-1-1947.

4. In or about November 1946 as required under law the petitioners applied to the Regional Transport Officer, Karnatak Region, Belgaum for renewal of their aforesaid Permit expiring on 6-1-1947. The said officer acting under the orders of the Respondents did not proceed with the said application in accordance with the provisions of the sections 57 and 58 of the said Act but renewed the permit for stage carriages from time to time for a duration only of a period of four months at a time upto 6-1-1950 and thereafter from 7-1-1950 to 31-1-1950 from 1-2-1950 to 14-2-1950. About the 9th of February 1950 the Petitioners were informed by the Secretary, Regional Transport Authority, Belgaum that their Permit will be extended upto 28-2-1950.

5. On 20th September 1949 the secretary of the Regional Transport Authority, Belgaum by his letter of that date forwarded to the Petitioners a copy of the Government Notification, Home Department No.4714/5 dated 31-8-1949 which declared the intention of the Government to cancel the permits specified in the schedule

schedule annexed to that Notification which included the permit of the Petitioners and proceeded to state that that officer was directed to inform the Petitioners that aktnough the validity of the Petitioners temporary permit extended beyond 30-11-1949, the same should be treated as valid upto 30-11-1949. Hereto annexed and marked Exhibit "A" is a copy of the said letter and the relevant extracts of the said Notification No. 4714/5.

6. The Government Notification No. 4714/5 aforesaid was purported to be issued in exercise of the powers conferred by sub-section (1) of section 43 of the said Act and stated that the Government was pleased to make the declaration of its intention to cancel the permits specified in the schedule thereto and that in doing so Government had regard to the provisions of clauses (a) to (d) of sub-section (I) aforesaid and that Government had heard the representatives of the interests affected and had consulted the Provincial Transport Authority, Bombay and Regional Transport Authority, Belgaum. The petitioners state that the petitioners and several other owners of Transport business in the Karnatak Region were vitally affected by the powers exercised by the Government and by the Notification aforesaid and yet no representative of the petitioners was heard as stated in the said Notification and that the petitioners on inquiries have learned that no representative of any of the owners of the Motor Transport businesses in the Karnatak Region was heard by Government or by any of its officers regarding the issue of the said Notification, and the declaration therein or the exercise of the powers therein mentioned.

7. Subsequent to the date of the said Notification the Secretary Regional Transport Authority, Belgaum, by his letter dated 29-11-1949 stated that the petitioners had been granted a temporary extension of one month from 1-12-1949 in respect of the petitioners temporary permit. By a letter dated 30-12-1949 from the secretary the Regional Transport Authority, Belgaum. The petitioners were given notice of the fact that as the state Transport had applied for permit on the routes hitherto operated by the petitioners it was likely that the petitioners may not be able to operate on those routes after 31-1-1950. By his letter dated 20-1-1950 the secretary Regional Transport Authority Belgaum informed the petitioners that the date of taking over busm services by the state Transport had been postponed to 15-2-1950 and that the petitioners may operate their bus services upto 14-2-1950 and that it was likely that the petitioners may not be able to operate the said services after 14-2-1950. Hereto annexed and collectively marked as "B" are copies of the aforesaid correspondence.

8. The petitioners state that the action of the Respondent No. 1 in issuing the said Notification No. 4714/5 has been mala-fide in as much as Respondent No.1 or the other respondents have not at all heard the representatives of the interests affected by the said Notification is illegal, void and inoperative. The Petitioners further submit that the conduct of the officers of the Government including the secretary Regional.....

Regional Transport Authority Belgaum and of the Respondents 2 and 3 subsequent to the issue of the said Notification has been guided by the directions given to them from time to time by Respondent No. 1 in pursuance of the declaration of intention contained in the said Notification and that acting on the said directions the said officer and +Authority refused to consider the application of the petitioners for renewal of their permit and have failed and neglected to follow the provisions laid down in sections 57 and 58 and to renew the permit of the petitioners for period not less than three years and have thus acted in contravention of the provision of the said Act and have renewed from time to time the permit of the petitioners for very short durations as stated in para 7 thereof. The aforesaid conduct of the Respondents and of the officers of the Respondents acting under the directions of the Respondents has been contrary to the provisions of the said Act.

9. For about past 3 years the Respondent No. 1 have been following what they call the policy of nationalisation of Road Transport services and in pursuance thereof they started a Department of State Transport which has been plying motor buses for transport of the passengers in several parts of the State of Bombay. Eventually in exercise of the powers conferred upon them by the Road Transport Corporation Act XXXII of 1948 Respondent No. 1 have purported to constitute the Bombay State Road Transport Corporation by their Notification No. 1780/5 dated 16th November 1949

and have thereunder appointed certain persons to constitute the Board and have transferred their entire business of plying Motor buses for carrying passengers to the said Corporation.

10. At all times material to this petition the 2nd respondent has been the Provincial head of the Officers administering the said Act and has also held the position of the Provincial head of the Transport business carried on by the 1st respondent as State Transport, as also of the newly set up Bombay State Road Transport Corporation. With a view to carry out the policy of the 1st respondent calculated to oust and supplant the entire business of the Motor Transport by private individuals the 2nd respondent and the officers subordinate to him as well as the Provincial Transport Authority and the Respondent No.3 have acted in accordance with the directions of the 1st respondents given to them and have not used any independant judgment of their own in deciding matters relating to the permit of the petitioners and the renewal thereof since 6-1-1947 and their decisions have been biased and prejudiced. The respondents 1 and 2 have in the above matters from time to time given directions to the Officers and to Respondent No. 3 entrusted with the administration of the said act which have resulted in violation of the provisions of the said act as to grant of renewal of the permit to the petitioners and have intentionally and deliberately violated and circumvented the provisions of the said act as well as of the Road Transport Corporation Act relating to the prescribed amount of the compensation payable to the petitioners in respect of the taking over.....

over of their business by passing such orders as will reduce to minimum or to nothing the amount of ----- compensation payable to the petitioners in respect of their business and its good will under the said Act as well as the Road Transport Corporation Act.

11. At the instance of the 1st, 2nd Respondents, the 3rd Respondents addressed to several owners of passenger bus services in Karnatak Region a letter identical in terms with the said letter dated 20-9-1949 and the letters contained in Exhibit B and also renewed their permits on a temporary basis and between 1-12-1949 to the date of this petition, the renewals were all made the date of this petition, the renewals were all made for the same periods as the renewals of the Petitioners' permit. The obvious object of the said letter dated 20-9-1949 and the said letter contained in Exhibit B and similar letters addressed to others was that as soon as the buses of the State Transport of the said corporation were ready to start working in any area the Regional Transport Authority concerned acting under the directions of the 1st and 2nd Respondents would cancel the subsisting permits of the private operators and would refuse to renew any permit had expired . The Petitioners state that the temporary renewals of the permits of the Petitioners and others in the area was devised to suit the convenience of the State Transport department and the said corporation who had not been able to complete their preparation for starting their services.

12. Under Article 14 of the Constitution of India the Petitioners are entitled to a treatment before the law and protection of the law equal with the Transport business carried on by the 1st and 2nd Respondents and with the

business --

17 +)

business of the Bombay State Road Transport Corporation of which the 2nd Respondent is the Head. Under Article 19(g) of the Constitution of India the Petitioners have the right to the freedom of carrying on the business of playing passenger bus services.

13. On account of the facts and circumstances aforesaid and the events that have happened in the proceedings relating to the renewal of the permit of the petitioners the petitioners have had no fair trial and the Petitioners apprehend that they have no chance ofa fair trial of their case at the hands of the Officers and official bodies administering the Motor Vehicles Act and that the fundamental rights under Articles 14 and 19(g) of the Constitution are violated by the respondents and the officers and bodies ad-insitering the said Act, Thew respondents have failed to notice that after the passing of the Road Transport Corporation act and after the Constitution of India came into force such of the provisions of the said Act as contravene the provisions of the Road Transport Corporation Act and the fundamental rights of the petitioners are inoperative and that the respondents and all officers are bound to administer the said act so as not to violate the fundamental rights of the petitioners.

14. The petitioners state that with the obj ct of totally outsting the petitioners from their business and in its stead carrying on similar business themselves through the Bombay State Road Transport Corporation and with the object of depriving the petitioners of their busines and any right to claim compensation for good-will, loss of business and capital invested therein the respondents have failed and neglected to and have directed

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directed their officers not to renew the permit of the petitioners and have threatened to cancel the same from 1-3-1950 and misused the powers under and provisions of the said Act.

1-3-1950

Judicial functions

16. The Petitioners submit that the functions to be discharged by the 2nd respondent and the officers and bodies subordinate to him in the matter of renewal ~~in~~ of Stage Carriage Permit of the petitioners and of taking over and ascertaining compensation for the business of the petitioners are judicial functions and that the 2nd respondent and the officers subordinate to him including the Provincial Transport Authority, Bombay and Respondent No. 3, have acted in accordance with the directions of the 1st and 2nd respondents and failed to exercise their discretion and the powers vested in them and acted irregularly therein and have acted in excess of the jurisdiction vested in them by the said Act read with and controlled by Part III of the Constitution of India.

15-A The petitioners submit that it is in the interests of ~~justicex~~ that this Hon'ble Court should issue a Writ of prohibition or make other suitable order against the respondents ordering them or any of ~~themxxk~~ not to do any act or pass any order based on the said Government notification No. 4714/5 dated 31-8-1949 and also not to do any act or pass any order which will have the effect of ousting the petitioners from ord~~d~~priving them of their existing business of transport by stage carriages.

31-8-49

16. The Petitioners submit that under the circumstances it necessary in the interest of justice that this Hon'ble Court should issue the Writ of Certiorari calling for the records of proceedings relating to the permit for stage carriages of the petitioners before the Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as may be just and equitable.

17. The Petitioners submit that it is in the interests of justice that the Respondents Nos. 3 be ordered by an order and mandatory injunction of this Hon'ble Court to renew the Permit for Stage Carriage of the petitioners f[illegible] than three years...

21

18. The petitioners submit that it is necessary in the interests of justice that the respondents be prohibited by a Writ of Prohibition from themselves issuing orders or giving directions to the Officers or bodies administering the said Act to cancel the Stage carriage permit of the petitioners and from passing any orders other than the order renewing the stage carriage permit of the petitioners and from doing any act calculated to prejudically affect the business of Transport by stage carriages carried on by the petitioners.

19. The petitioners submit in the alternative that it is in the interests of the justice that this Hon'ble Court will in the exercise of its powers of superintendence call for the records of proceedings relating to the stage carriage permit of the petitioners and pass such orders as justice of the case may require.

June Memo 1949. We have already been allowed Suspension was given

20. The petitioners say, that they have no specific and adequate legal remedy other than the orders prayed for herein, and that the remedy applied for by them will be complete. The petitioners submit that the orders prayed for by them are the only remedy open to them and if the same are not granted it will be impossible for them to obtain redress.

21. Under the circumstances aforesaid the Petitioners state that pending the hearing and final disposal of this petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of Transport by Stage Carriage carried on by the Petitioners.

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22. The orders passed by and directions given by the Respondents Nos. 1 and 2 were all passed and given in the City of Bombay, and the orders passed by the Respondents 3 and the officers and bodies subordinate to the Respondents were passed within the State of Bombay and this Hon'ble Court will have jurisdiction to entertain this petition.

23. The Petitioners, therefore, pray:-

(a) That this Hon'ble Court will be pleased to issue a writ of prohibition or other suitable order against the respondents ordering them or any one of them not to do any act or pass any order based on the said Government notification No.4714/5 dated 31-8-1949 which will have the effect of ousting the petitioners from or depriving them of the existing business of transport by stage carriages.

(b) That this Hon'ble Court may be pleased to issue a Writ of Certiorari calling for the records of proceedings pending before the Regional Transport Authority Belgaum relating to the Permit for stage Carriages of the Petitioners before this Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as may be just and necessary;

(c) That this Hon'ble Court will be pleased to issue a mandatory injunction against the Respondents No.3 and order them to renew the permits for Stage Carriage of the Petitioners for a period not less than three years.

(d) That in the alternative in exercise of the power of superintendance this Hon'ble Court may be pleased to call for the records of proceedings relating to the stage Carriage permit of the Petitioners and pass such orders as justice of the case may require.

(e) That this Hon'ble Court may be pleased to order that pending the hearing and final disposal of this Petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any ord

calculated to affect prejudicialy the business of transport by Stage Carriages carried on by the Petitioners, and may further be ordered to renew the permit.

(f) That such order as to this Hon'ble Court may seem fit be made as regards the costs of the Petitioners of this Petition

and

(g) That the petitioners may have such further and other relief as the nature of the case may require.

Sd/- The Chikodi Motor Tr. Co.....
The Chikodi Motor Tr. Co.

Usual affirmation clause follows:---

27 AB

In the High Court of Judicature at Bombay.

Ordinary and Inherent Jurisdiction.

Mis. No. of 1950.

In the matter of Motor Vehicles Act 1939

Motor Vehicles (Bombay Amendment)Act, 1947.

And

The Road Transport Corporation Act of 1948.

The Chikodi Motor Transport Co. Chikodi a)
firm. . . . . .) Petitioners.

V/s

1. The State of Bombay & Others. . . . .) Respondents.

I, Alberkmunir Abbas Mulla of Chikodi Dist. Belgaum now temporarily residing at Hornby Road Bombay do solemnly affirm and state as under:-

1. The petitioners are a partnership firm. I am a manager the petitioners and I am directed by the petitioners to atte to this petition. I know the facts relating to the petition herein.

2. I confirm the statements made in the Petition declare on 16-2-1950. The petitioners have filed this petition prayi for a Writ of Certiorari against the respondents in relation to the preceedings for the permit of Stage carriages of the petitioners for a mandatory injunction and for other reliefs.

3. The partners of the petitioners and their predecessors in business have built up the entire business of Road transp ort on the 13 routes on which they hold the permit and have spent their labour energy andmoney on the development thereof for more than 20 years. They have invested large capital in building up the said business to its present proportions. The said business has been the main source of livelihood and employment of the members of the petitioners. Big motor garrages for a fleet of about 19 motor buses, offices, work- shop, waiting sheds for passengers, well for water are some of their items of investments on which the petitioners moneys are spent. The above and other investments in motor buses and a large stock of spare parts will all be virtually lost to the petitioners if their business is stopped. Under the positio

P.T.O.

as obtained at present none of the Respondents nor the Bombay State Road Transport Corporation are under any obligation to acquire and pay for any of the aforesaid assets and investments made by the petitioners.

4. I state that it is almost certain from the information available to me that from 1-3-1950 the Government of Bombay is going to introduce state Transport services on the routes on which the petitioners are plying their buses and that the permit of the petitioners which expires on the 28-1-50 will not be renewed and that consequently the business of the petitioners on routes where the permits will not be renewed will come to an end.

5. So far as the inquiries made by the petitioners go no application on behalf of the State Transport or the Bombay State Road Transport Corporation has been published in the Gazette as required by section 57 of the Motor Vehicles Act and consequently no p-ermit can be issued to either of them under Sections 57 and 58 of the said Act. The petitioners apprehend that in total disregard to the provisions of the said Act the Respondents are likely to misuse the provisions of Sec.62(d) of the Act in favour of the State Transport of the said Corporation and disregard the vested rights of the petitioners to a permit based on the principle indicated in secs. 47, 57 and 58 of the Act and the principle so far uniformly followed of preferring an existing operator to a new comer.

6. If the petitionersare not granted some interim relief whereby their permit is renewed the petitioners will be put to irreparable loss. It is, therefore, prayed that the petitioners, should be granted the interim relief asked for in prayer (d) of the petition. The petition may not reach hearing before the 28-2-1950 and if nointerim relief is granted to the petitioners the loss to the petitioners may be such as will be irreparable.

Solemnly affirmed at Bombay aforesaid this 16th day of February 1950.....) Sd/-

Before me,

Sd/.....
Asstt.Master.

Sd/.....
Petitioners' Attorneys.

29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Appellate Jurisdiction

Civil Application No. of 1950.

In the matter of Motor Vehicles Act, 1939

Motor Vehicles (Bombay Amendment) Act, 1947;

and

The Road Transport Corporation Act of 1948.

The Chikodi Motor Transport Company)
Chikodi, a firm registered under the)
Indian Partnership Act, 1932 and having)
its office at Chikodi District Belgaum.) Applicants.

versus.

1. The State of Bombay, 2. the Provincial)
Transport Officer of the Government of)
Bombay having his office at Churchgate)
Bombay; and 3 The Regional Transport)
Authority Karnatak Region Belgaum being)
a body constituted under the Motor)
Vehicles Act, 1939.) Respondents.

The Chikodi Motor Transport Company, the applicants abovenamed do hereby appoint MESSRS. GOKHALE KALE & COMPANY, Attorneys-at-Law, to be their Attorneys to act for them in the above application.

Dated this 17th day of February 1950.

Witness:
Sd/-.....

The Chikodi Motor Transport Co.,
Sd/- Partner,
Applicants:-

Accepted.
Sd/.....

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Ordinary Original Civil Jurisdiction

Petition No. of 1950.

Civil Application No. 285 of 1950.

In the matter of Motor Vehicles Act, 1939

Motor Vehicles (Bombay Amendment) Act 1947

and

The Road Transport Corporation Act 1948.

The Chikodi Motor Transport Co.. Petitioners.

-Vs-

The State of Bombay and others ... Respondents.

I, Dattatraya Krishna Sukhatankar, of Bombay Hindu Inhabitant the Secretary, Regional Transport Authority, Karnatak Region, Belgaum, the 3rd Respondent abovenamed do solemnly affirm and say as follows:-

1. I have perused a copy of the Petition declared herein on the 14th day of February 1950 and a copy of the affidavit of Mr. A. A. Mulla also affirmed on the 16th day of February 1950.

2. I am informed that the matter is due for hearing on the 27th February 1950 when the Petitioner by a notice has prayed that this Honourable Court may be pleased to order that pending the hearing and final disposal of this Petition the Respondent may be restrained by an order and injunction of this Honourable Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of transport by State Carriages carried on by the Petitioners and that the Respondent may further be ordered to renew the Petitioners Permit. I am, in the circumstances, making this affidavit in order to meet the Petitioners said Application for interim reliefs and crave leave and reserve my right to make a fuller

affidavit hereafter to meet the several allegations contained in the Petition.

3. I say at the outset that the Petitioners had full notice of the fact that their business would have to be wound up by the 1st March 1950 by reason of the fact that the proposal for nationalisation of road transport in the Province of Bombay was widely circulated and advertised and objections were invited from the general public including all persons affected by the proposed scheme as far back as the 14th January 1947. The said scheme was subsequently debated and approved by both the Houses of Legislature and I say that the Petitioners were therefore fully aware that in the financial year 1949-50 the said scheme would come into force in the Belgaum Division. I therefore say that as a matter of fact the Petitioners had sufficient time from 1947 onwards to make arrangements to wind up their business. In this connection I crave leave to rely on when produced a printed copy of a "Scheme for nationalisation of passenger bus service (Rural areas) in the Province of Bombay" published and circulated by the Home Department of Bombay on the 14th January 1947.

4. I say that the Notification sought to be challenged herein was issued by Government on the 31st August 1949. It is admitted by the Petitioner that in pursuance of this notification the Regional Transport Authority informed the Petitioners among others by a letter dated the 20th September 1949 that although the Petitioners' temporary permit was valid upto 6-1-50, the same should be treated as valid only upto the 30th Jovember 1949. I say that the Petitioners had several remedies open to them against the Order contained in the said letter of the 20th September 1949 and they did not choose to avail themselves of the same. I say that the Petitioners could have filed appeals under the provisions of the Motor Vehicles Act 1939 and could also have filed a suit [redacted]

35 4

against Government . I further say that not only did the Petitioners fail to take any steps as aforesaid but in fact they acquiesced in the Order by applying from time to time for temporary permits. I say that in fact the Petitioners have applied for permits on forms departmentally known as "Form P. Tem.A" which forms are particularly reserved for applications for temporary permits under Section 62 of the Motor Vehicles Act 1939 since the 7th January 1947 and that from this date the records show that from time to time the only permits issued to the Petitioners on applications made on Forms P.Tem A were tmeporary permits. The Petitioners last applied on the 10-1-50 on the said "P.Tem A" form for a temporary permit for a maximum period of four months but the temporary permit granted to them expires on the 28th February 1950. I therefore respectfully submit that it was or should have been absolutely clear to the Petitioners on receipt of the said letter dated 20th September 1949 and the grant of temporary permits that the permit granted to them would eventually be cancelled and not renewed. The Petitioners did not take any action until 20th February 1950. I therefore submit that the present Petition is liable to be dismissed by reason of the great delay in adopting these proceedings. I crave leave to rely on the correspondence and applications referred to above when produced.

5. I say that as a matter of fact letters were received from a large number of operators by the Provincial Transport officer requesting two months time to wind up their business and make all other necessary arrangements. Time was allowed until the 1st March 1950.

6. I further say that in any event the Petitioners' submissions relating to the said notification No. 4714/5 dated 31st August 1949 are irrelevant and/or misconceived. The true facts are that although by virtue of the said notification Governme[illegible] declared its intention to cancel the permits specified i[illegible]

the Schedule thereto, Government did not in fact at any time cancel the said permits as it may have subsequently done under the provisions of Section 43(1) (iii). Instead by the Road Transport Corporation act (1948) the state Road Transport Corporation was brought into existance and at present the said State Road Transport Corporation is the only applicant for a permit to operate the stage Carriage - Services on the various routes to which the Petitioners permit at present applies. I say therefore that in fact no question now arises of my acting under the said notification dated 31st August 1949. I say that the said Bombay State Transport Corporation being the only applicant whose application is within time and as such being vitally interested is a necessary party to these proceedings and I submit that no interim relief can be granted in its absence.

7. I respectfully submit that it was quite clear to the Petitiners on the grant of temporary permits under Section 62, as aforesaid, that regular permit contemplated by Section 58(2) was not granted, thus in effect rejecting the Petitiohers' application for such permit; and if the Petitioners had any grievances their proper remedy was to appeal as provided by Section 64(a) of the said Act to the Appellate Authority prescribed under the Act within the Prescribed time of 30 days against the order ragarding their application. The Petitioners have not done so. I therefore respectfully submit that since the Petitioners have an adequate legal remedy by way of the said appeal and even a further appeal to Government, this Petition is absolutely misconceived. I further respectfully submit that the Petitioners by these proceedings require this Honourable Court to investigate their grievances for non renewal of the permit which object they could have otherwise

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otherwise achieved by preferring appeals as contemplated by the said Act. The Petitioners having failed to take advantage of the provisions of the said Act I submit that they cannot be permitted to agitate their grievances in these proceedings.

8. Without prejudice to the foregoing contentions I respectfully submit that the Petitioners have not applied for either a regular permit as required by Section 58 of the Motor Vehicles Act or a temporary permit under Section 62 as they had done up till now and that in the absence of any application from the Petitioners whatsoever, the Petition is premature and/or misconceived and does not disclose any cause of action. I further respectfully submit that even assuming that there was a cause of action the Petitioners remedy lay in appealing to the Provincial Transport Authority under Section 64 of the Motor Vehicles Act read with Rule 76 of the Bombay Motor Vehicles Rules and not by these proceedings. I therefore respectfully submit that the Petitioners have not made out a case for the interim relief as prayed for and pray that the present application be dismissed with costs.

Solemnly affirmed at Bombay)
aforesaid this day of)
February 1950 ....)

Before me,

Associate
Assistant Master.

High Court.

O. O. C. J.

Petition No. of 1950.

Civil Appln.No. 285 of 1950.

In the matter of Motor Vehicles Act 1939.

Motor Vehicles (Bombay Amendment) Act 1947.

The Chikodi Motor Transport Co. . Petitioners.

vs.

The State of Bombay & others ..... Respondents.

Affddavit of D.K.Sukhatanker.

Affirmed this day of February 1950.

Messrs Little & Co.
Respondents' Attorneys.

43 43 286

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Civil Appln.No.286 of 1950

In the matter of Motor Vehicles Act, 1939

Motor Vehicles (Bombay Amendment) Act, 1947

and

The Road Transport Corporation Act, 1948.

The Shankeshwar Gokak Motor Transport Company Ltd., Petitioner.

versus

The State of Bombay, and others .... Respondents.

I, Dattatraya Krishna Suhtankar, of Bombay Hindu Inhabitant the Secretary, Regional Transport Authority, Karnatak Region, Belgaum, the 3rd Respondent abovenamed do solemnly affirm and say as follows:-

1. I have perused a copy of the Petition declared herein on the 14th day of February 1950 and a copy of the affidavit of Mr. K.R.Mudashi also affirmed on the 16th day of February 1950.

2. I am informed that the matter is due for hearing on the 27th February 1950 when the Petitioner by a notice has prayed that this Honourable Court may be pleased to order that pending the hearing and final disposal of this Petition the Respondent may be restrained by an order and injunction of this Honourable Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to or pass any orders calculated to affect prejudicially the business of transport by Stage Carriages carried on by the Petitioners and that the Respondent may further be ordered to renew the Petitioners Permit. I am, in the circumstances,making this affidavit in order to meet the Petitioners said Application for interim reliefs and crave leave and reserve my r ight to make a fuller affidavit hereafter to meet the several allegations contained in the Petition.

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3. I say at the outest that the Petitioners had full notice of the fact that their business would have to be wound up by the 1st March 1950 by reason of the fact that the proposal for nationalisation of the road transport in the Province of Bombay was widely circulated and advertised and objections were invited from the general public including all persons affected by the proposed scheme as far back as the 14th January 1947. The said scheme was subsequently debated and approved by both the Houses of Legislature and I say that the Petitioners were therefore fully aware that in the financial year 1949-50 the said scheme would come into force in the Belgaum Division. I therefore say that as a matter of fact the Petitioners had sufficient time from 1947 onwards to make arrangements to wind up their business. In this connectio-n I crave leave to reply on when produced a printed copy of the "Scheme for the nationalisation of Passenger bus service (Rural areas) in the Province of Bombay" published and circulated by the Home Department of Bombay on the 14th January 1947.

4. I say that the Notification sought to be challanged herein was issued by Government and on the 31st August 1949. It is admitted by the Petitioner that in pursuance of this Notification the Regional Transport Authority informed the Petitioners among others by a letter date the 20th September 1949 that although the Petitioners' permit was valid upto 6-1-50, the same should be treated as valid only upto the 30th November 1949. I say that the Petitioners had several remedies open to them against the Order contained in the said letter of the 20th September 1949 and they did not choose to avail themselves of the same. I say that the Petitioners could have filed appeals under the provisions of the Motor Vehicles Act 1939 and could also have filed a suit against Government. I further say that not only did the Petitioners failed to taken any steps as aforesaid but in the fact acquiesced in the Order by applying from time to time for temporary permits. I say that in fact the Petitioners have applied for permits on forms department

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ally known as "Form P.Temp.A" which forms are particularly reserved for applications for temporary permits, ever since 7-1-1949, and that from this date onwards the records show that from time to time the only permit issued to the Petitioners on application made on Form P. Tem. A were temporary permits. The Petitione-rs last applied on the 2-2-50 on the said P.Tem.A form, for a temporary permit for a"further period" and a permit was granted valid upto the 28th February 1950. I therefore respectfully submit that it was or should have been absolutely clear to the Petitioners on receipt of the said letter dated 20th September 1949 and the grant of temporary permits that the permit granted to them would eventually be cancelled and not renewed. The Petitioners did not take any action until 20th February 1950. I therefore submit that the present Petition is liable to be dismissed by reason of the great delay in - adopting these proceedings. I crave leave to rely on the correspondence and applications referred to above when produced.

5. I further refer to a letter dated 4-2-50 received by the Provincial Transport Officer, the second Respondent herein wherein the Petitioners have themselves asked for time upto 1st March 1950 to wind up their business and other current work relating to the reduction of their employees. Hereto annexed and marked Ex.1 is a copy of the said letter dated 4th February 1950.

6. I say that as a matter of fact letters similar to the said letter of 4th February 1950 were received from a large number of other operators and in order to meet their requirements to wind up their business and make all other arrangements, time was allowed until the 1st March 1950.

7. I further say that in any event the Petitioners' submissions relating to the said notification No.4714/5 dated 31st August 1949 are irrelevant and/or misconceived. The true facts are that although by virtue of the said notification Government declared its intentio-n to cancel the permits specified in the

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the Schedule thereto, Government did not in fact at any time cancel the said permits as it may have subsequently done under the provisions of Section 43(1)(iii). Instead by the Bombay Road Transport Corporation Act (1948) the Road Transport Corporation was brought into existence and at present the said Road Transport Corporation is the only applicant for a permit to operate the Stage Carriage Services on the various routes to which the Petitioners permit at present applies. I say therefore that in fact no question now arises of my acting under the said notification dated 31st August 1949. I say that the said Bombay State Road Transport Corporation being the only applicant whose application is within time, and as such being vitally interested is a necessary party to these proceedings and I submit that no interim relief can be granted in its absence.

8. I respectfully submit that it was quite clear to the Petitioners on the grant of temporary permits under Section 62, as aforesaid, that a regular permit contemplated by Section 58(2) was not granted, thus in effect rejecting the Petitioners' application for such permit; and if the Petitio ners had any grievances their proper remedy was to appeal as provided by Section 64(a) of the said Act to the Appellate Authority prescribed under the Act within the prescribed time of 30 days against the order regarding their application. The Petitioners have not done so. I therefore respectfully submit that since the Petitioners have an adequate legal remedy by way of the said appeal and even a further appeal to Government, this Petition is absolutely misconceived. I further respectfully submit that the Petitioners by these proceedings require this Honourable Court to investigate -- their grievences for non renewal of the permit which object they could have otherwise achieved by preferring appeals as contempla-ted by the said Act. The Petitioners havir

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having failed to take advantage of the provisions of the said Act I submit that they cannot be permitted to agitate their grievances in these proceedings.

9. Without prejudice to the foregoing contentions I respectfully submit that the Petitioners have not applied ~~Petitioners~~ for either a regular permit as required by Section 58 of the Motor Vehicles Act or a temporary per-mit under Section 62 as they had done up till now and that in the absence of any application from the Petitioners whatsoever, the Petition is premature and/or misconceived and does not disclose any cause of action. I further respectuflly submit that even assuming that there was a course of action the Petitioners remedies lay in appealing to the Provincial Transport Authority under Section 64 of the Motor Vehicles Act read with Rule 76 of the Bombay Motor Vehicles Rules 1940 and not in these proceedings. I therefore respectfully submit that the Petitioners have not made out a case for the interim relief as prayed for and pray that the present application be dismissed with costs.'

Solemnly affirmed at Bombay)
aforesaid this day of)
February 1950)

Befoe me,

53 256

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY AND INHERENT JURISDICTION

Civil Application No. 286 of 1950.

Mis. No. of 1950

In the Matter of Motor Vehicles Act, 1939

Motor Vehicles (Bombay Amendment) Act, 1947;

and

The Road Transport Corporation Act, 1948.

The Shankeshwar Gokak Motor Transport Company Ltd. an incorporated Company registered under the Indian Companies Act, 1913 having its registered office at Sankeshwar District Belgaum in the State of Bombay. ... ... Petitioners.

Versus

1. The State of Bombay
2. The Provincial Transport Officer, of the Government of Bombay having his office at Churchgate in Bombay,

and

3. The Regional Transport Authority, Karnatak Region, Belgaum, being a body constituted under the Motor Vehicles Act, 1939. Respondents.

To,

The Hon'ble Chief Justice and the other Judges of this Hon'ble Court.

The humble Petition of the Petitioners abovenamed;

Humbly Sheweth:-

1. The Petitioners are a company registered under the Indian Companies Act, having their office at Sankeshwar in the District of Belgaum, Respondent No.2 is the officer of

Respondents No.1

Respondents No.1 , in charge of the administration of the Motor Vehicles Act and Respondents No.3 is the authority constituted under the said Act.

2. Prior to 1943 several persons carried on business of playing motor buses for Carriage of passengers on different routes in the Southern part of the State of Bombay. Acting under the directions given from time to time by the authorities administering the Motor Vehicles Act, 1939 (hereinafter referred to as the said Act) the said persons firstly formed themselves into a Union and thereafter in the year 1943 promoted the Petitioners' company with themselves as members for the purpose of conducting the said business of passenger transport and for taking over the said several businesses of Motor Transport carried on by them. The Petitioners took over the said businesses and have been carrying on the business of Motor Transport on different routes in the Southern part of the State of Bomba.. All the members of the Petitioners are domocile citizens of India.

3. After the businesses were taken over by the Petitioners as aforesaid the Petitioners were granted Stage Carriage Permit No. P. St.S. 176(1.16) by the authorities under the said Act of a duration contemplated by Section 58 of the Act and the said Permit was renewed to the Petitioners, under Section 57 Sub-clause 2 and the duration of the last such renewed permit expired on 6th January 1949.

4. As required under law, in or about November 1948 the Petitioners applied to the Regional Transport Officer, Karnatak Region, Belgaum for renewal of their aforesaid permit expiring on 6th January 1949. The said officer acting under the orders of the Respondents did not proceed with the said application in accordance with the provisions of the Sections 57 and 58 of the said Act but renewed the permit for Stage Carriages from time to time for a duration time ~~xpixxéxixixxxxixixxxx~~ only of a period of four months at a time u to 6-1-1950 and thereafter from 7-1-1950 to 31-1-1950 and from 1-2-1950 to 14-2-1950. About the 9th of February 1950,

the Petitioners were informed by the Secretary, Regional Transport Authority, Belgaum that their permit will be extended upto 28-12 2-1950.

5. On 10th September 1949 the Secretary of the Regional Transport Authority, Belgaum by his letter of that date forwarded to the petitioners a copy of the Government Notification Home Department No. 4714/5 dated 31-8-1949 which declared the intention of the Government to cancel the permits specified in the Schedule annexed to that Notification which included the permit of the Petitioners and proceeded to state that that officer was directed to inform the Petitioners that although the validity of the Petitioners' Temporary permit extended beyond 30-11-1949 the same should be treated as valid upto 30-11-1949. Hereto annexed and marked Exhibit "A" is a copy of the said letter and the relevant extracts of the said Notification No. 4714/5.

6. The Government Notification No. 4714/5 aforesaid was purported to be issued in exercise of the powers conferred by Sub-Section (1) of Section 43 of the said Act and stated that the Government was pleased to make the declaration of its intention to cancel the permits specified in the Schedule thereto and that in doing so Government had regard to the provisions of clauses (a) to (d) of Sub-Section (I) aforesaid and that Government had heard the representatives of the interests affected and had consulted the Provincial Transport Authority, Bombay and the Regional Transport Authority, Belgaum. The Petitioners state that the Petitioners and several other owners aof Transport business in the Karnatak Region were vitally affected by the powers exercised by the Government and by the Notification aforesaid and yet, no representative of the Petitioners was heard as stated in the said Notification and that the Petitioners on inquiries have learnt that no representative of any of the owners of the Motor Transport businesses in th Karnatak Region was heard

by-

by Government or by any of its officers regarding the issue of the said Notification and the declaration therein or the exercise of the powers therein metioned.

7. Subsequent to the date of the said Notification the Secretary, Regional Transport Authorityx, Belgaum by his letter dated 29-11-1949 stated that the Petitioners had been granted a temporary extension of one month from 1-12-1949 in respect of the Petitioners' Temporary Permit. By a letter dated 30-12-1949 from the Secretary the Regional Transport Authority, Belgaum the Petitioners were given notice of the fact that as the State Transport had applied for permit on the routes thitherto operated by the Petitioners it was likely that the Petitioners may not be able to operate on those routes after 31-1-1950. By his letter dated 21-1-1950 the Secretary, Regional Transport Authority, Belgaum informed the Petitioners that the date of taking over bus services by the State Transport had been postponed to 15-2-1950 and that the Petitioners may operate their bus services upto 14-2-1950 and that it was likely that the Petitioners may not be able to operate the said services after 14-2-1950. Hereto annexed and collectively marked Exhibit "B" are copies of the aforesaid correspondence.

8. The Petitioners state that the action of the Respondent No.1 in issuing the said Notification No. 4714/6 was mala fide, inasmuch as Respondent No.1 or any other Respondents have not at all heard the representative s of the interests affected by the said Notification. The Petitioners submit that the said Notification is ix illegal, void and inoperative. The Petitioners further submit that the conduct of the officers of the Government including the Secretary, Regional Transport Authority, Belgaum and of the said Respondents 2 and 3 subsequent to the issue of the said Notification has been guided by the directions given to them from time to time by Respondent No.1 in pursuance of the declaration of intention contained in the said Notification and that acting on the said directions the

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said officers and authority have refused to consider the application of the Petitioners for renewal of their permit and have failed and neglected to follow the profisions laid down in Sections 57 and 58 and to renew the permit of the Petitioners for a period not less than three years, and have thus acted in contravention of the provisions of the said Act and have renewed from time to time the Permit of the Petitioners for very short durations as stated in para 7 hereof. The aforesaid conduct of the Respondents and of the officers of the Respondents acting under the directions of the Respondents has been contrary to the provisions of the said Act.

9. For about past three years the Respondent No.1 have been following what they call the policy of nationalisation of Road Transport Services and in pursuance thereof they started a Department of State Transport which has been plying motor buses for transport of the passengers in several parts of the State of Bombay. Eventually in exercise of the powers conferred upon them by the Road Transport Corporation Act, Act XXXII of 1948 Respondent No.1 have purp-orted to constitute the Bombay State Road Transport Corporation by their Notification No. 1780/5 dated 16th November 1949 and have thereunder appointed certain person's to constitute the Board and have transferred their entire business of plying Motor buses for carrying passengers to the said Corporation.

10. At all times material to this Petition the 2nd Respondent has been the Provincial Head of the Officers administering the said Act and has also held the position of the Provincial Head of the Transport business carried on by the 1st Respondent as State Transport, as also of the newly set up Bombay State Road Transport Corporation. With a view to carry out the policy of the 1st Respondent calculated to oust and supplant the entire business of the Motor Transport by private individuals the 2nd Respondent and the Officers

ubordinate-

subordinate to him as well as the Provincial Transport Authority Bombay and Respondent No.3 and have acted in accordance with the directions of the 1st Respondent given to them and have not used any independent judgment of their own in deciding matters relating to the permit of the Petitioners and the renewal thereof since 6th January 1949 and their decisions have been biased and prejudiced. The Respondents Nos. 1 and 2 have in the above matters from time to time given directions to the Officers and to Respondent No.3 entrusted with the administration of the said Act which have resulted in vailation of the provisions of the said Act as to grant of renewal of the Permit to the Petitioners and have intentionally and deliberately vailated and circumvented the provisions of the said Act as well as of the Road Transport Corporation Act relating to the prescribed amount of compensation payable to the Petitioners in respect of the taking over of their business by passing such orders as will reduce to a minimum or to nothing the amount of compensation payable to the Petitioners in respect of their business and its goodwill under the said Act as well as the Road Transport Corporation Act.

11. That at the instance of the 1st and the 2nd Respondents, the 3rd Respondent addressed to several owners of passenger bus services in Karnatak Region a letter identical in terms with the said letter dated 20-9-1949 and the letters contained in Ex. B and also renewed their permits on a temporary basis and between 1-12-1949 to the date of this Petition, the renewals were all made for the same periods as the renewals of the Petitioners' permit. The obvious object of the said letter dated 20-9-1949 and the said letters contained in Ex.B and similar letters addressed to others was that as soon as the buses of the State Transport or the said corporation were ready to start working in any area the Regional Transport Authority cocerned acting under the directions of the 1st and 2nd Respondents would cancel the subsisting permits of the private operators and would refuse to renew any permit which had expired. The Petitioners state that the temporary renewals of the permits--

of the Petitioners and others in the area was revised to suit the convenience of the State Transport Department and the said Corporation who had not been able to complete their preparation for starting their services.

12. Under Article 14 of the Constitution of India the Petitioners are entitled to a treatment before the law and protection of the law equal with the Transport business carried on by the 1st and 2nd Respondents and with the business of the Bombay State Road Transport Corporation of which the 2nd Respondent is the Head. Under Article 19 (g) of the Constitution of India the Petitioners have the right to the freedom of carrying on the business of plying passenger bus services.

13. On account of the facts and circumstances aforesaid and the events that have happened in the proceedings relating to the renewal of the permit of the Petitioners, the Petitioners have had no fair trial and the Petitioners apprehend that they have no chance of a fair trial of their case at the hands of the officers and official bodies administering the Motor Vehicles Act and that the fundamental rights under Articles 14 and 19 (g) of the Constitution are violated by the Respondents and the officers and bodies administering the said Act. The Respondents have failed to notice that after the passing of the Road Transport Corporation Act and after the Constitution of India came into force such of the provisions of the said Act as contravene the provisions of the Road Transport Corporation Act and the fundamental rights of the Petitioners are inoperative and that the Respondents and all officers are bound to administer the said Acts as not to violate the fundamental rights of the Petitioners.

14. The Petitioners state that with the object of totally ousting the Petitioners from their business and in its stead carrying on similar business themselves through the Bombay State Road Transport Corporation and with the object of depriving the Petitioners of their business and any right to-

to claim compensation for goodwill, loss of business and the capital invested therein the Respondents have failed and neglected to and have directed their officers not to renew the Permit of the Petitioners and have therefore attend to cancel the same from 1-3-1950, and misused the powers under the provisions of the said Act,

15. The Petitioners submit that the functions to be discharged by the 2nd Respondent and the officers and bodies subordinate to him in the matter of renewal of State Carriage Permit of the Petitioners and of taking over and ascertaining compensation for the business of the Petitioners are judicial functions and that the 2nd Respondent and the officers subordinate to him including the Provincial Transport Authority, Bombay and Regional Transport Authority, Respondent No.3 have acted in accordance with the directions of the 1st and 2nd Respondents and failed to exercise their discretion and the powers vested in them and acted irregularly therein and have acted in excess of the jurisdiction vested in them by the said Act read with and controlled by Part III of the Constitution of India.

16(a) The Petitioners submit that it is in the interests of justice that this Hon'ble Court should issue a Writ of prohibition or make other suitable order against the respondents ordering them or any of them not to do any act or pass any order based on the said Government Notification No.4714/5 dated 31-8-1949 and also not to do any act or pass any order which will have the effect of ousting the petitioners fromor depriving them of their existing business of transport by stage carriages.

(16). The Petitioners submit that under the circumstances it is necessary in the interest of justice that this Honible Court should issue the Writ of Certiorari calling for the records of proceedings relating to the Permit for Stage Carriages of the Petitioners before the Honourable Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as maybe just and equitable.

17. The Petitioners submit that it is in the interest of justice that the Respondent No.3 be ordered by an order and a Mandatory injunction of this Hon'ble Court or renew the Permit for State Carriage of the Petitioners for a period not less than three years.

18. The Petitioners submit that it is necessary in the interest of justice that the Respondents be prohibited by a Writ of Prohibition from themselves issuing orders or giving directions

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to the officers or bodies administering the said Act to cancel the Stage Carriage Permit of the Petitioners and from passing any orders other than the order renewing the Stage Carriage Permit of the Petitioners and from doing any act calculated to prejudicially affect the business of transport by stage carriages carried on by the Petitioners.

19. The Petitioners submit in the alternative that it is in the interest of justice that this Hon'ble Court will in the exercise of its powers of superintendence call for the records of proceedings relating to the Stage Carriage Permit of the Petitioners and pass such orders as justice of the case may require.

20. The Petitioners say, that they have no specific and adequate legal remedy other than the orders prayed forherein, and that the remedy applied for by them will be complete. The Petitioners submit that the orders prayed for by them are the only remedy open to them and if the same are not granted it will be impossible for them to obtain redress

21. Under the circumstances aforesaid the Petitioners state that pending the hereing and final disposal of this Petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of Transport by Stage Carriages carried on by the Petitioners.

22. The Orders passed by and directions given by the Respondents Nos. 1 and 2 were all passed and given in the City of Bombay, the orders passed by the Respondent No.3 and the officers and bodies subordinate to the Respondents were passed within the state of Bombay and this Hon'ble Court will have furisdiction to entertain this Petition.

23. The Petitioners, therfore, pray:-

(a) That this Hon'ble Court will be pleased to issue a writ of prohibition or other suitable order against the respondents ordering them or any one of them not to do any act or pass any order based on the said Government notification No.4714/8 dated 31-8-1949 which will have the effect of ousting the petitioners from or depriving them of the existing business of transport by stage carriages.

(a) That this Honble Court may be pleased to issue a writ of Certiorari calling for the record to issue proceedings:-

proceedings pending before the Regional Transport Authority Belgaum relating thereto to the Permit for Stage Carriages of the Petitioners before this Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and given such directions as may be just and necessary.

(b) That this Hon'ble Court will be pleased to issue a mandatory injunction against the Respondent No.3 and order them to renew the permits for Stage Carriage of the Petitioners for a period not less than three years.

(c) That in the alternative in exercise of the power of Superintendance this Hon'ble Court may be pleased to call for records of proceedings relating to the Stage Carriage Permit of the Petitioners and pass such orders as justice of the case may require;

(d) This Hon'ble Court may be pleased to order that pending the hearing and final disposal of this Petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the Permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of Transport by Stage Carriages carried on by the Petitioners and may further be ordered to renew the Permit;

(e) That such order as to this Hon'ble Court may seem fit be made as regards the costs of the Petitioners of this Petition;

and

(f) That the Peritioners may have such further and other relief as the nature of the case may require;

Petition drawn by:-

Messrs. Gokhale Wale & Co.

Attorneys at law.

693 73 786.

The Sankeshwar Gikak Motor Transport Co.Ltd. the handwriting of Kalappa Rudrappa Madashi

Sd.
Swon Interpeetor.

Date 16-2-1950.

I , KALAPPA RUDRAPPA MUDASHI of Sankeshwar District Belgaum now residing at Hornby Road, Fort, Bombay a Director of the Petitioners able to depose to the facts of this Petition solemnly delcare and stage that what is stated in paras 1,2,3 and 4 respect of 5,6 and 7 of the foregoing petition is ture to my knowledge and what is stated in paras. parts of 5,6,and 7 and 8 to 22 is stated on the information and belief and I beliefe the same to be true.

Solemnly declared at Bombay
aforesaid this 16th day
of February 1950.

Befpre ,e.

(Usual affairmation clause follows;X)

65

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY AND INHERENT JURISDICTION

Civil Application No. 286 of 1950.

Mis. No. of 1950

In the Matter of Motor Vehicles Act, 1939.

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and

The Road Transport Corporation Act, 1948.

The Shankeshwar Gokak Motor Transport Company Ltd. an incorporated Company registered under the Indian Companies Act, 1913 having its registered office at Sankeshwar District Belgaum in the State of Bombay. ... ... Petitioners.

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1. The State of Bombay
2. The Provincial Transport Officer, of the Government of Bombay having his office at Churchgate in Bombay,

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3. The Regional Transport Authority, Karnatak Region, Belgaum, being a body constituted under the Motor Vehicles Act, 1939. Respondents.

To,

The Hon'ble Chief Justice and the other Judges of this HOn'ble Court.

The humble Petition of the Petitioners abovenamed;

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1. The Petitioners are a company registered under the Indian Companies Act, having their office at Sankeshwar in the District of Belgaum, Respondent No.2 is the officer of

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Respondents No.1 , in charge of the administration of the Motor Vehicles Act and Respondents No.3 is the authority constituted under the said Act.

2. Prior to 1943 several persons carried on business of playing motor buses for Carriage of passengers on different routes in the Southern part of the State of Bombay. Acting under the directions given from time to time by the authorities administering the Motor Vehicles Act, 1939 (hereinafter referred to as the said Act) the said persons firstly formed themselves into a Union and thereafter in the year 1943 promoted the Petitioners' company with themselves as members for the purpose of conducting the said business of passenger transport and for taking over the said several businesses of Motor Transport carried on by them. The Petitioners took over the said businesses and have been carrying on the business of Motor Transport on different routes in the Southern part of the State of Bombay. All the members of the Petitioners are domicile citizens of India.

3. After the businesses were taken over by the Petitioners as aforesaid the Petitioners were granted Stage Carriage Permit No. P. St.S. 176(1.16) by the authorities under the said Act of a duration contemplated by Section 58 of the Act and the said Permit was renewed to the Petitioners, under Section 58 Sub-clause 2 and the duration of the last such renewed permit expired on 6th January 1949.

4. As required under law, in or about November 1948 the Petitioners applied to the Regional Transport Officer, Karnatak Region, Belgaum for renewal of their aforesaid permit expiring on 6th January 1949. The said officer acting under the orders of the Respondents did not proceed with the said application in accordance with the provisions of the Sections 57 and 58 of the said Act but renewed the permit for Stage Carriages from time to time for a duration ~~time xxxxxxxxxxxxxxxxxx~~ only of a period of four months at a time ~~x~~ to 6-1-1950 and thereafter from 7-1-1950 to 31-1-1950 and from 1-2-1950 to 14-2-1950. About the 9th of February 1950,

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5. On 10th September 1949 the Secretary of the Regional Transport Authority, Belgaum by his letter of that date forwarded to the petitioners a copy of the Government Notification Home Department No. 4714/5 dated 31-8-1949 which declared the intention of the Government to cancel the permits specified in the Schedule annexed to that Notification which included the permit of the Petitioners and proceeded to state that that officer was directed to inform the Petitioners that although the validity of the Petitioners' Temporary permit extended beyond 30-11-1949 the same should be treated as valid upto 30-11-1949. Hereto annexed and marked Exhibit "A" is a copy of the said letter and the relevant extracts of the said Notification No. 4714/5.

6. The Government Notification No. 4714/5 aforesaid was purported to be issued in exercise of the powers conferred by Sub-Section (1) of Section 43 of the said Act and stated that the Government was pleased to make the declaration of its intention to cancel the permits specified in the Schedule thereto and that in doing so Government had regard to the provisions of clauses (a) to (d) of Sub-Section (1) aforesaid and that Government had heard the representatives of the interests affected and had consulted the Provincial Transport Authority, Bombay and the Regional Transport Authority, Belgaum. The Petitioners state that the Petitioners and several other owners of Transport business in the Karnatak Region were vitally affected by the powers exercised by the Government and by the Notification aforesaid and yet, no representative of the Petitioners was heard as stated in the said Notification and that the Petitioners on inquiries have learnt that no representative of any of the owners of the Motor Transport businesses in th Karnatak Region was heard

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8. The Petitioners state that the action of the Respondent No.1 in issuing the said Notification No. 4714/6 has been malafide, inasmuch as Respondent No.1 or any other Respondents have not at all heard the representatives of the interests affected by the said Notification. The Petitioners submit that the said Notification is ~~it~~ illegal, void and inoperative. The Petitioners further submit that the conduct of the officers of the Government including the Secretary, Regional Transport Authority, Belgaum and of the said Respondents 2 and 3 subsequent to the issue of the said Notification has been guided by the directions given to them from time to time by Respondent No.1 in pursuance of the declaration of intention contained in the said Notification and that acting on the said directions the

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9. For about past three years the Respondent No.1 have been following what they call the policy of nationalisation of Road Transport Services and in pursuance thereof they started a Department of State Transport which has been plying motor buses for transport of the passengers in several parts of the State of Bombay. Eventually in exercise of the powers conferred upon them by the Road Transport Corporation Act, Act XXXII of 1948 Respondent No.1 have purported to constitute the Bombay State Road Transport Corporation by their Notification No. 1780/5 dated 16th November 1949 and have thereunder appointed certain persons to constitute the Board and have transferred their entire business of plying Motor buses for carrying passengers to the said Corporation.

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11. That at the instance of the 1st and the 2nd Respondents, the 3rd Respondent addressed to several owners of passenger bus services in Karnatak Region a letter identical in terms with the said letter dated 20-9-1949 and the letters contained in Ex. B and also renewed their permits on a temporary basis and between 1-12-1949 to the date of this Petition, the renewals were all made for the same periods as the renewals of the Petitioners' permit. The obvious object of the said letter dated 20-9-1949 and the said letters contained in Ex.B and similar letters addressed to others was that as soon as the buses of the State Transport or the said corporation were ready to start working in any area the Regional Transport Authority concerned acting under the directions of the 1st and 2nd Respondents would cancel the subsisting permits of the private operators ~~xxxixxxxxxxxxxxxxx~~ and would refuse to renew any permit which had expired. The Petitioners state that the temporary renewals of the permits--

of the Petitioners and others in the area was devised to suit the convenience of the State Transport Department and the said Corporation who had not been able to complete their preparation for starting their services.

12. Under Article 14 of the Constitution of India the Petitioners are entitled to a treatment before the law and protection of the law equal with the Transport business carried on by the 1st and 2nd Respondents and with the business of the Bombay State Road Transport Corporation of which the 2nd Respondent is the Head. Under Article 19 (g) of the Constitution of India the Petitioners have the right to the freedom of carrying on the business of plying passenger bus services.

13. On account of the facts and circumstances aforesaid and the events that have happened in the proceedings relating to the renewal of the permit of the Petitioners, the Petitioners have had no fair trial and the Petitioners apprehend that they have no chance of a fair trial of their case at the hands of the officers and official bodies administering the Motor Vehicles Act and that the fundamental rights under Articles 14 and 19 (g) of the Constitution are violated by the Respondents and the officers and bodies administering the said Act. The Respondents have failed to notice that after the passing of the Road Transport Corporation Act and after the Constitution of India came into force such of the provisions of the said Act as contravene the provisions of the Road Transport Corporation Act and the fundamental rights of the Petitioners are inoperative and that the Respondents and all officers are bound to administer the said Acts so not to violate the fundamental rights of the Petitioners.

14. The Petitioners state that with the object of totally ousting the Petitioners from their business and in its stead carrying on similar business themselves through the Bombay State Road Transport Corporation and with the object of depriving the Petitioners of their business and any right to-

to claim compensation for goodwill, loss of business and the capital invested therein the Respondents have failed and neglected to and have directed their officers not to renew the Permit of the Petitioners and have thereafter intend to cancel the same from 1-3-1950, and misused the powers under the provisions of the said Act,

16. The Petitioners submit that the functions to be discharged by the 2nd Respondent and the officers and bodies subordinate to him in the matter of renewal of State Carriage Permit of the Petitioners and of taking over and ascertaining compensation for the business of the Petitioners are judicial functions and that the 2nd Respondent and the officers subordinate to him, including the Provincial Transport Authority, Bombay and Regional Transport Authority, Respondent No.3 have acted in accordance with the directions of the 1st and 2nd Respondents and failed to exercise their discretion and the powers vested in them and acted irregularly therein and have acted in excess of the jurisdiction vested in them by the said Act read with and controlled by Part III of the Constitution of India.

16(a) The Petitioners submit that it is in the interests of justice that this Hon'ble Court should issue a Writ of prohibition or make other suitable order against the respondents ordering them or any of them not to do any act or pass any order based on the said Government Notification No.4714/5 dated 31-3-1949 and also not to do any act or pass any order which will have the effect of ousting the petitioners from or depriving them of their existing business of transport by stage carriages.

(16). The Petitioners submit that under the circumstances it is necessary in the interest of justice that this Honible Court should issue the Writ of Certiorari calling for the records of proceedings relating to the Permit for Stage Carriages of the Petitioners before the Honourable Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as maybe just and equitable.

17. The Petitioners submit that it is in the interest of justice that the Respondent No.3 be ordered by an order and a Mandatory injunction of this Hon'ble Court or renew the Permit for State Carriage of the Petitioners for a period not less than three years.

18. The Petitioners submit that it is necessary in the interest of justice that the Respondents be prohibited by a Writ of Prohibition from themselves issuing orders or giving directions

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to the officers or bodies administering the said Act to cancel the Stage Carriage Permit of the Petitioners and from passing any orders other than the order renewing the Stage Carriage Permit of the Petitioners/and from doing any act calculated to prejudicially affect the business of transport by stage carriages carried on by the Petitioners.

19. The Petitioners submit in the alternative that it is in the interest of justice that this Hon'ble Court will in the exercise of its powers of superintendence call for the records of proceedings relating to the Stage Carriage Permit of the Petitioners and pass such orders as justice or the case may require.

20. The Petitioners say, that they have no specific and adequate legal remedy other than the orders prayed for her-in, and that the remedy applied for by them will be complete. The Petitioners submit that the orders prayed for by them are the only remedy open to them and if the same are not granted it will be impossible for them to obtain redress

21. Under the circumstances aforesaid the Petitioners state that pending the hearing and final disposal of this Petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of Transport by Stage Carriages carried on by the Petitioners.

22. The Orders passed by and directions given by the Respondents Nos. 1 and 2 were all passed and given in the City of Bombay, the orders passed by the Respondent No.3 and the officers and bodies subor-dinate to the Respondents were passed within the state of Bombay and this Hon'ble Court will have jurisdiction to entertain this Petitio

(a) That this Hon'ble Court will be pleased to issue a writ of prohibition or other suitable or or ders not the respondents ordering them or any one of them not to do any act or pass any order based on t the said Government notification No.4714/5 dated 31-8-1949 which will have the effect of ousting the petitioners from or depriving them of t the existing business of transport by stage carriages.

23. The Petitioners, therfore ..pray:-

(a) That this Honble Court may be pleased to issue a writ of Certiorari calling for the record to issue proceedings-

proceedings pending before the Regional Transport Authority Belgaum relating thereto to the Permit for Stage Carriages of the Petitioners before this Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and given such directions as may be just and necessary.

(b) That this Hon'ble Court will be pleased to issue a mandatory injunction against the Respondent No.3 and order them to renew the permits for Stage Carriage of the Petitioners for a period not less than three years.

(c) That in the alternative in exercise of the power of Superintendance this Hon'ble Court may be pleased to call for records of proceedings relating to the Stage Carriage Permit of the Petitioners and pass such orders as justice of the case may require;

(d) This Hon'ble Court may be pleased to order that pending the hearing and final disposal of this Petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the Permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of Transport by Stage Carriages carried on by the Petitioners and may further be ordered to renew the Permit;

(e) That such order as to this Hon'ble Court may seem fit be made as regards the costs of the Petitioners of this Petition;

and

(f) That the Petitioners may have such further and other relief as the nature of the case may require;

Petition drawn by:-

Messrs. Gokhale Wale & Co.

Attorneys at law.

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The Sankeshwar Gikak Motor Transport Co.Ltd. the handwriting of Kalappa Rudrappa Mudashi

is known to me.

Sworn Interpreter.

Date 16-2-1950.

I, MALAPPA RUDRAPPA MUDASHI of Sankeshwar District Belgaum now residing at Hornby Road, Fort, Bombay a Director of the Petitioners able to depose to the facts of this Petition solemnly declare and stage that what is stated in paras 1,2,3 and 4 respect of 5,6 and 7 of the foregoing petition is ture to my knowledge and what is stated in paras. parts of 5,6,and 7 and 8 to 22 is stated on the information and belief and I beliefe the same to be true.

Solemnly declared at Bombay
aforesaid this 16th day
of February 1950.

Before me.

(Usual affairmation clause follows;%)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY AND INHERENT JURISDICTION.

Misc. No. of 1950.

In the matter of Motor Vehicles Act 1939 Motor Vehicles(Bombay Amendment) Act 1947.

And

The Road Transport Corporation Act of 1948.

The Chikodi Motor Transport Co.)
'Chikodi, a firm Registered under)
the Indian Partnership Act 1932)
and having its office at Chikodi)
District Belgaum.....) Petitioners.

Versus.

1. The State of Bombay.
2. The Provincial Transport)
Officer of the Government of)
Bombay having his office at)
Churchgate Bombay....)
3. The Regional Transport)
Authority Karnatak Region)
Belgaum being a body constituted)
under the Motor Vehicles Act)
1939.....) Respondents.

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To.

The Hon'ble Chief Justice and the Other Judges
of this Hon'ble Court.

THE HUMBLE PETITION OF THE PETITIONERS ABOVENAMED.
HUMBLY SHEWETH:-

1. The Petitioners are a partnership firm registered under Indian Partnership Act 1932 and having its office at Chikodi in District Belgaum. Respondents Nos. 2 is the officer of Respondents No. 1 in charge of the administration of the Motor Vehicles Act 1939 and Respondents No. 3 is the authority---constituted under the said Act.

2. Prior to 1943 several persons carried on business of plying Motor buses for carriage of passengers on different routes in the southern part of State of Bombay. Acting under the directions given from time to time by the authorities administering the Motor Vehicles Act 1939 (hereinafter referred to as the said Act') the said persons firstly formed themselves into a Union and thereafter in the year 1943 promoted the Petitioners firm with themselves as its partners for the purposes of conducting the said usiness of passenger transport and for taking over the said serveral businesses of Motor Transport carried on by them. The Petitioner's took over the said businesses and have been carrying on the business of Motor Transport on different routes in the southern part of the State of Bombay. All the partners of the Petitioners are domicile citizens of India.

3. After the businesses were taken over by the Petitioners as aforesaid the petitioners were granted Stage Carriage Permit No. P.St.S. 146(1-18) by the authorities under the said Act of a duration contemplated by Section 58 of the Act and the said Permit was renewed to the Petitioners under section 58 sub-clause 2 and the duration of the last such renewed permit expired on 6-1-1947.

4. In or about November 1946 as required under law the petitioners applied to the Regional Transport Officer, Karnatak Region, Belgaum for renewal of their aforesaid Permit expiring on 6-1-1947. The said officer acting under the orders of the Respondents did not proceed with the said application in accordance with the provisions of the sections 57 and 58 of the said Act but renewed the permit for stage carriages from time to time for a duration only of a period of four months at a time upto 6-1-1950 and thereafter from 7-1-1950 to 31-1-1950 from 1-2-1950 to 14-2-1950. About the 9th of February 1950 the Petitioners were informed by the Secretary, Regional Transport Authority, Belgaum that their Permit will ~~xxx~~ be extended upto 28-2-1950.

5. On 20th September 1949 the secretary of the Regional Transport Authority, Belgaum by his letter of that date forwarded to the Petitioners a copy of the Government Notification, Home Department No.4714/5 dated 31-8-1949 which declared the intention of the Government to cancel the permits specified in the schedule

schedule annexed to that Notification which included the permit of the Petitioners and proceeded to state that that officer was directed to inform the Petitioners that although the validity of the Petitioners temporary permit the same should be treated as extended beyond 30-11-1949. ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ valid upto 30-11-1949. Hereto annexed and marked Exhibit "A" is a copy of the said letter and the relevant extracts of the said Notification No. 4714/5.

6. The Government Notification No. 4714/5 aforesaid was purported to be issued in exercise of the powers conferred by sub-section (1) of section 43 of the said Act and stated that the Government was pleased to make the declaration of its intention to cancel the permits specified in the schedule thereto and that in doing so Government had regard to the provisions of clauses (a) to (d) of sub-section (I) aforesaid and that Government had heard the representatives of the interests affected and had consulted the Provincial Transport Authority, Bombay and Regional Transport Authority, Belgaum. The petitioners state that the petitioners and several other owners of Transport business in the Karnatak Region were vitally affected by the powers exercised by the Government and by the Notification aforesaid and yet no representative of the petitioners was heard as stated in the said Notification and that the petitioners on inquiries have learned that no representative of any of the owners of the Motor Transport businesses in the Karnatak Region was heard by Government or by any of its officers regarding the issue of the said Notification, and the declaration therein or the exercise of the powers therein mentioned.

7. Subsequent to the date of the said Notification the Secretary Regional Transport Authority, Belgaum, by his letter dated 29-11-1949 stated that the petitioners had been granted a temporary extension of one month from 1-12-1949 in respect of the petitioners temporary permit. By a letter dated 30-12-1949 from the secretary the Regional Transport Authority, Belgaum. The petitioners were given notice of the fact that as the state Transport had applied for permit on the routes hitherto operated by the petitioners it was likely that the petitioners may not be able to operate on those routes after 31-1-1950. By his letter dated 20-1-1950 the secretary Regional Transport Authority Belgaum informed the petitioners that the date of taking over bus services by the state Transport had been postponed to 15-2-1950 and that the petitioners may operate their bus services upto 14-2-1950 and that it was likely that the petitioners may not be able to operate the said services after 14-2-1950. Hereto annexed and collectively marked as "B" are copies of the aforesaid correspondence.

8. The petitioners state that the action of the Respondent No. 1 in issuing the said Notification No. 4714/5 has been mala-fide in as much as Respondent No.1 or the other respondents have not at all heard the representatives of the interests affected by the said Notification is illegal, void and inoperative. The Petitioners further submit that the conduct of the officers of the Government including the secretary Regional.....

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Regional Transport Authority Belgaum and of the Respondents 2 and 3 subsequent to the issue of the said Notification has been guided by the directions given to them from time to time by Respondent No. 1 in pursuance of the declaration of intention contained in the said Notification and that acting on the said directions the said officer and +Authority refused to consider the application of the petitioners for renewal of their permit and have failed and neglected to follow the provisions laid down in sections 57 and 58 and to renew the permit of the petitioners for a period not less than three years and have thus acted in contravention of the provision of the said Act and have renewed from time to time the permit of the petitioners for very short durations as stated in para 7 thereof. The aforesaid conduct of the Respondents and of the officers of the Respondents acting under the directions of the Respondents has been contrary to the provisions of the said Act.

9. For about past 3 years the Respondent No. 1 have been following what they call the policy of nationalisation of Road Transport services and in pursuance thereof they started a Department of State Transport which has been plying motor buses for transport of the passengers in several parts of the State of Bombay. Eventually in exercise of the powers conferred upon them by the Road Transport Corporation Act, Act XXXII of 1948 Respondent No. 1 have purported to constitute the Bombay State Road Transport Corporation by their Notification No. 1780/5 dated 16th November 1949

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and have thereunder appointed certain persons to constitute the Board and have transferred their entire business of plying Motor buses for carrying passengers to the said Corporation.

10. At all times material to this petition the 2nd respondent has been the Provincial head of the Officers administering the said Act and has also held the position of the Provincial head of the Transport business carried on by the 1st respondent as State Transport, as also of the newly set up Bombay State Road Transport Corporation. With a view to carry out the policy of the 1st respondent calculated to oust and supplant the entire business of the Motor Transport by private individuals the 2nd respondent and the officers subordinate to him as well as the Provincial Transport Authority and the Respondent No.3 have acted in accordance with the directions of the 1st respondents given to them and have not used any independant judgment of their own in deciding matters relating to the permit of the petitioners and the renewal thereof since 6-1-1947 and their decisions have been biased and prejudiced. The respondents 1 and 2 have in the above matters from time to time given directions to the Officers and to Respondent No. 3 entrusted with the administration of the said act which have resulted in violation of the provisions of the said act as to grant of renewal of the permit to the petitioners and have intentionally and deliberately violated and circumvented the provisions of the said act as well as of the Road Transport Corporation Act relating to the prescribed amount of the compensation payable to the petitioners in respect of the taking over.....

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over of their business by passing such orders as will reduce to minimum or to nothing the amount of compensation payable to the petitioners in respect of their business and its good will under the said Act as well as the Road Transport Corporation Act.

11. At the instance of the 1st, 2nd Respondents, the 3rd Respondents addressed to several owners of passenger bus services in Karnatak Region a letter identical in terms with the said letter dated 20-9-1949 and the letters contained in Exhibit B and also renewed their permits on a temporary basis and between 1-12-1949 to the date of this petition, the renewals were all made the date of this petition, the renewals were all made for the same periods as the renewals of the Petitioners(permit. The obvious object of the said letter dated 20-9-1949 and the said letter contained in Exhibit B and similar letters addressed to others was that as soon as the buses of the State Transport of the said corporation were ready to start working in any area the Regional Transport Authority concerned acting under the directions of the 1st and 2nd Respondents wou l cancel the subsisting permits of the private operators and would refuse to renew any permit had expired . The Petitioners state that the temporary renewals of the permits of the Petitioners and others in the area was devised to suit the convenience of the State Transport department and the said corporation who had not been able to complete their preparation for starting their services.

12. Under Article 14 of the Constitution of India the Petitioners are entitled to a treatment before the law and protection of the law equal with the Transport business carried on by the 1st and 2nd Respondents and with the

business --

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business of the Bombay State Road Transport Corporation of which the 2nd Respondent is the Head. Under Article 19(g) of the Constitution of India the Petitioners have the right to the freedom of carrying on the business of playing passenger bus services.

13. On account of the facts and circumstances aforesaid and the events that have happened in the proceedings relating to the renewal of the permit of the petitioners the petitioners have had no fair trial and the Petitioners apprehend that they have no chance ofa fair trial of their case at the hands of the Officers and official bodies administering the Motor Vehicles Act and that the fundamental rights under Articles 14 and 19(g) of the Constitution are violated by the respondents and the officers and bodies adminsiter the said Act, The respondents have failed to notice that after the passing of the Road Transport Corporation act and after the Constitution of India came into force such of the provisions of the said Act as contravene the provisions of the Road Transport Corporation Act and the fundamental rights of the petitioners are inoperative and that the respondents and all officers are bound to administer the said act so as not to violate the fundamental rights of the petitioners.

14. The petitioners state that with the obj ct of totally outsting the petitioners from their business and in its stead carrying on similar business themselves through the Bombay State Road Transport Corporation and with the object of depriving the petitioners of their busines and any right to claim compensation for good-will, loss of business and capital invested therein the respondents have failed and neglected to and have

lirected

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directed their officers not to renew the permit of the petitioners and have threatened to cancel the same from 1-3-1950 and misused the powers under and provisions of the said Act.

15. The Petitioners submit that the functions to be discharged by the 2nd respondent and the officers and bodies subordinate to him in the matter of renewal of Stage Carriage Permit of the petitioners and of taking over and ascertaining compensation for the business of the petitioners are judicial functions and that the 2nd respondent and the officers subordinate to him including the Provincial Transport Authority, Bombay and Respondent No. 3, have acted in accordance with the directions of the 1st and 2nd respondents and failed to exercise their discretion and the powers vested in them and acted irregularly therein and have acted in excess of the jurisdiction vested in them by the said Act read with and controlled by Part III of the Constitution of India.

15-A The petitioners submit that it is in the interests of justice that this Hon'ble Court should issue a Writ of prohibition or make other suitable order against the respondents ordering them or any of them not to do any act or pass any order based on the said Government notification No. 4714/5 dated 31-8-1949 and also not to do any act or pass any order which will have the effect of ousting the petitioners from ordepriving them of their existing business of transport by stage carriages.

16. The Petitioners submit that under the circumstances it necessary in the interest of justice that this Hon'ble Court should issue the Writ of Certiorari calling for the records of proceedings relating to the permit for stage carriages of the petitioners before the Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as may be just and equitable.

17. The Petitioners submit that it is in the interests of justice that the Respondents Nos. 3 be ordered by an order and mandatory injunction of this Hon'ble Court to renew the Permit for Stage Carriage of the petitioners for a period not less than three years...

18. The petitioners submit that it is necessary in the interests of justice that the respondents be prohibited by a Writ of Prohibition from themselves issuing orders or giving directions to the Officers or bodies administering the said Act to cancel the Stage carriage permit of the petitioners and from passing any orders other than the order renewing the stage carriage permit of the petitioners and from doing any act calculated to prejudically affect the business of Transport by stage carriages carried on by the petitioners.

19. The petitioners submit in the alternative that it is in the interests of the justice that this Hon'ble Court will in the exercise of its powers of superintendence call for the records of proceedings relating to the stage carriage permit of the petitioners and pass such orders as justice of the case may require.

20. The petitioners say, that they have no specific and adequate legal remedy other than the orders prayed for herein, and that the remedy applied for by them will be complete. The petitioners submit that the orders prayed for by them are the only remedy open to them and if the same are not granted it will be impossible for them to obtain redress.

21. Under the circumstances aforesaid the Petitioners state that pending the hearing and final disposal of this petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any orders calculated to affect prejudicially the business of Transport by Stage Carriage carries on by the Petitioners.

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22. The orders passed by and directions given by the Respondents Nos. 1 and 2 were all passed and given in the City of Bombay, and the orders passed by the Respondents 3 and the officers and bodies subordinate to the Respondents were passed within the State of Bombay and this Hon'ble Court will have jurisdiction to entertain this petition.

23. The Petitioners, therefore, pray:-

(a) That this Hon'ble Court will be pleased to issue a writ of prohibition or other suitable order against the respondents ordering them or any one of them not to do any act or pass any order based on the said Government notification No.4714/5 dated 31-8-1949 which will have the effect of ousting the petitioners from or depriving them of the existing business of transport by stage carriages.

b) That this Hon'ble Court may be pleased to issue a Writ of Certiorari calling for the records of proceedings pending before the Regional Transport Authority Belgaum relating to the Permit for stage Carriages of the Petitioners before this Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as may be just and necessary;

(c) That this Hon'ble Court will be pleased to issue a mandatory injunction against the Respondents No.3 and order them to renew the permits for Stage Carriage of the Petitioners for a period not less than three years.

(d) That in the alternative in exercise of the power of superintendance this Hon'ble Court may be pleased to call for the records of proceedings relating to the stage Carriage permit of the Petitioners and pass such orders as justice of the case may require.

(e) That this Hon'ble Court may be pleased to order that pending the hearing and final disposal of this Petition the Respondents may be restrained by an order and injunction of this Hon'ble Court from passing any order cancelling the permit of the Petitioners and from doing or omitting to do or pass any ord

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calculated to affect prejudicialy the business of transport by Stage Carriages carried on by the Petitioners, and may further be ordered to renew the permit.

(f) That such order as to this Hon'ble Court may seem fit be made as regards the costs of the Petitioners of this Petition

and

(g) That the petitioners may have such further and other relief as the nature of the case may require.

Sd/- The. Chikodi. Motor. Tr.. Co.....

The Chikodi Motor Tr. Co.

Usual affirmation clause follows:---

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Civil Application No.285 of 1950 with Civil Applications Nos. 286/1950 and 289/1950.

C.A.285/1950. Mr.P.P.Khambatta and Mr.G.V.Gokhale instructed by Attorneys Messrs. Gokhale ~~and~~ Kale & Co., for the Petitioners.
Mr.M.P.Amin, with the Addl. Assistt.Govt. Pleader for the State. Messrs. Little and Co. for all.

C.A.286/1950 Mr.K.N.Dharap and Mr.G.V.Gokhale instructed by Messrs. Gokhale Kale & Co., for the Petitioners.
Appearance as above for opponents.

C.A.287/1950. Mr.K.S.Sukhatanker, Mr.G.V.Gokhale and Mr.K.S.Daundkar for the Petitioner.
(instructed by Messrs. Gokhale Kale and Co).

Same appearance for the Opponents as above.

Coram:Chagla C.J., and Gajandragadkar J.

27th February 1950.

Oral Judgment (Per Chagla C.J);-

These are three petitions submitted by the Petitioners who are carrying on the business of plying motor buses for carriage of passengers on different routes in the southern part of the state of Bombay, and the applications are for Writs of Certiorari, Prohibition, and Mandamus. The main grievance made in these petitions is that Government have issued a notification, being Notification Home Department No.4714/5 dated the 31st of August 1949, expressing their intention to cancel the permits issued to the Petitioners without following the procedure laid down under Section 43 of the Motor Vehicles Act, 1939, and particularly without hearing the Petitioners before the notification was issued.

Now, without going into the details as to dates which differ in the three petitions - the broad facts are that permits were issued for plying motor buses to all the three Petitioners. In the case of two of the Petitioner, the permits expired before the 31st of August 1949; in the case of the third Petitioner, the permit expired in January 1950.

We shall deal first with the case of the two Petitioners whose permits having expired, the Petitioners applied for a renewal of the permits; the Government, instead of granting a fresh permit, issued temporary permits under section 62 of the Motor Vehicles Act. These temporary permits were for short stated periods, and they were renewed from time to time, and the last temporary permits are to expire on the 28th of February this year. It is, therefore, clear that, when the notification of the 31st of August 1949 was issued, there were no ~~xxbxxi xxbxxi~~ subsisting permits in favour of the two petitioners. Therefore, it ~~xx~~ also ~~f~~allows that Government could not express any intention to cancel permits with reference to these two petitioners when there were no permits in existence. At the relevant date of 31st of August, 1949, the ~~p~~he position was that the Petitioners were carrying on their business under temporary permits, and their applications for permanent permits were pending before the proper authorities. Government have made it clear in their ~~proper~~ affidavits on these petitions that they are not relying on the notifications of the 31st of August 1949 -- as indeed they could not, because, as we pointed out, the notification could not apply to the petitioners in as much as they were not in possession of any permanent permits issued by the transport authorities which Government could declare an intention to cancel. Therefore, in our opinion, it is unnecessary to consider whether Government heard the parties interested before the notification of the 31st of August 1949 was issued. If there were permanent permits ~~xxxxx~~ issued to the Petitioner, and if Government had expresed their intention to cancel those permits under Section 43, then undoubtedly the procedure laid down in that section would have to be complied with; and if Government had issued a notification without hearing the parties as

required by section 43, then this Court might have interfered and issued a Writ of Certioari. But as it is not necessary to consider that position at all, inasmuch as no question of hearing the parties arose under Section 43, the applications of the Petitinners with regard to the Writ of Certiorari of Prohibition must fail.

The other contention that is put forward before us is that in any case the Petitioners are entitled to a Writ of Mandamus against the transport authorities in order to compel them to deal with the Petitioners' applications for permanent permits. Now, before a Writ of Mandamus can issue, there must be a demand for justice and a denial of justice. It is not the Petitioners' case and it cannot be their case - - - that at any time before filing of these petitions they ever called upon the transport authorities to deal with and dispose of their applications for renewal of permits. On the contrary the facts clearly show that the Petitioners were quite content with the temporary permits which were issued from time to time by the transport authorities under section 62, and they never pressed their case with regard to the permanent permits. It is not disputed that under Section 62 it is purely discretionary with the transport authorities to issue (to issue) or not to issue a temporary permit. Therefore, the transport, the transport authorities intimated to the Petitioners that, on the 28th of February 1949, when the last temporary permits expire, no fresh temporary permits would be issued. Therefore, in our opinion, no case also arises for the issue of a Writ of Mandamus.

Mr.Khambatta has contended that if fundamental rights are violated, then under article 226 of the Constitution it is incubent upon the Court to issue one of the Writs for which of the Petitioners pray in their petitions. It is perfectly true that our constiution has now given very valuable rights to the citizens in the whole of the State. The right which was exclusive to those residing within the terriotoried the fell under the original jurisdiction of this Court now can be availed of by all the subjects in the whole of the State. But that does not mean

that the Court would issue Writs otherwise than in accordance with the judicial principles which are well settled for the issue of these Writs. Writs can only be issued provided a case has been made out for the issue of those Writs. The only additional right that the subject has got is that this right can be availed of throught the State and not merely within the original jurisdiction of the High Court.

The case with regard to the third Petitioner whose permanent permit expired in January 1950 is on the same footing as the case of the other petitioners. After the permit expired, he applied for a renewal of his permit, and that application is also pending. Although in one sence the notification No.471/5 dated the 31st August 1949 might have been effective in the case of the third Petitioner, in fact Government never cancelled his permit and the permit was allowed to run out by efflux of time. Therefore, he also has no grievence if he was not heard when the notification of the 31st of August 1949 was issued.

Therefore, in our opinion, no case has been made out by the petitioners for the issue of any of the Writs asked for by them in the petitioners. Therefore, their applications for an interim injunction must fail and must be dismissed with costs.

The same result must follow with regard to the rules themselves which have been issued on these petitions. The parties are agreed that we should dispose of the rules at this stage rather than allow the rules to appear at a later stage and make the formal order on the rule, Therefore, the rules will be discharged with costs.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No.490 of 1950.

Petition for Leave to appeal to the Supreme Court of India from the Judgment and Order dated the 27th day of February 1950 of this Hon'ble Court in Civil Application No.285 of 1950-

In the matter of the Motor Vehicles Act, 1939 Motor Vehicles (Bombay Amendment) Act, 1947;

and

The Road Transport Corporation Act of 1948.

The Chikodi Motor Transport Co.,Chikodi, a firm registered under the Indian Partnership Act,1932 and having its office at Chikodi District Belgaum. Petitioner.

Versus

1. The State of Bombay;
2. The Provincial Transport Officer of the Government of Bombay having his office at Churchgate, Bombay and
3. The Regional Transport Authority Karnatak Region Belgaum being a body Constituted under the Motor Vehicles Act, 1939. Respondents.

Claim Rs. 25000/-

To

The Honourable the Chief Justice and the other Judges of this Honourable Court.

The Petition of the Petitioners abovenamed,

SHOWETH:-

1. That the Civil Application No.285 of 1950 filed by

the Petitioners abovenamed in the High Court of Judicature at Bombay prayed:

(a) for the issue of a Writ of Prohibition or other suitable order against the Respondents ordering them or any one of them not to do any act or pass any order based on the Bombay Government Notification No.4714/5 dated 31-8-1949 and also not to do any act or pass any order which will have the effect of ousting the Petitioners from or depriving them of the existing business of transport by stage Carriages:

(b) for the issue of Writ of Certiorari calling for the record of proceedings pending before the Regional Transport Authority, Belgaum relating to the Permit for Stage Carriages of the Petitioners, before this Hon'ble Court and after looking into the same to revise the orders hitherto passed and pass such orders and give such directions as may be just and necessary;

(c) for a mandatory injunction against the Respondents No.3 ordering them to renew the Permits for Stage Carriages of the Petitioners for a period not less than three years;

(e) for costs and for other relief.

2. That the said application came on for hearing before the Hon'ble the Chief Justice and the Hon'ble Mr.Justice Gajendragadkar on the 27th day of February 1950 and their Lordships on that day passed an order rejecting the application with costs.

3. That your Petitioners feeling themselves aggrieved by

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by the said decree or order are desirous of appealing to the Supreme Court of India from the same on the grounds following:-

1 The application was approached from a wrong point of view by assuming that the main grievance in the Petition was that the Government had issued the Notification Home Department No.4714/5 dated the 31st August 1949 without following the procedure laid down under Section 43 of the Motor Vehicles Act, 1939 and particularly without hearing the Petitioners. The Application should have been approached from the point of view that the issue of the said Notification expressing Government's intention to cancel permits issued to the Petitioners and others rendered further proceeding with their application for the renewal of their permit on the part of the Petitioner, futile.

2. It was an error to hold that Writ of Certiorari or prohibition could not be issued because the Notification of 31-8-1947 declaring Government 's intention to cancel permits was not operative as there was no subsisting permit in favour of the Petitioners and the Government itself had stated that they were not relying on the Notification.

3. It ought to have been held that circumstances other that the issue of the said Notification existed which called for the issue of the Writs of Certiorari and Prohibition.

4. Tt was clear from the facts before the Court that the Regional Transport Authority entrusted with the power to grant permits were throughout acting under the orders of Government and that the Regional Transport Authority did not act in its discretion or judicially -

in

in not considering the Petitioners' application for permit.

5. The affidavit on behalf of the Respondents in clear terms asserts that by the issue of Notification dated 31-8-1947 the application of the Petitioners for regular permit was in effect rejected and that they know that knew that the Temporary permits granted to them would eventually be cancelled. In the above circumstances after having held that the Petitioners' application for the renewal of their regular permit was pending and was not disposed of by the Regional Transport Authority it was an error to hold that the Petitioners did not press their application and that there was no demand of justice on the part of the Petitioners and no refusal thereof by the authorities.

6. The orders prayed for ought to have been granted.

7. It ought to have been noticed that the authorities deliberately used the provisions of Motor Vehicles Act to deprive the Petitioners of their business without paying compensation.

8. It ought to have been held that fundamental rights assured to the Petitioners by the Constritution of India inter alia those contained in Article 14 and 19(g) were violated by the illegal use of the provision of the Motor Vehicles Act.

9. The Petitioners had amply proved that the officers and authorities under the said Act had caused wrong ful loss to the Petitioners and relief by some adequate orders or directions ought to have been granted to the Petitioners even though the Petitioners were held to have not made out a case for the issue of any of the Writs asked for.

4. That the Order from which the appeal is sought to the

Supreme -

Supreme Court of India involves a claim or question respecting property of the amount or value of more than Rs.20,000/- and that the case is a fit one for appeal to the Supreme Court.

5. That the order from which an appeal is sought to the Supreme Court of India involves a substantial question of law as to the interpretation of the Constitution of India.

6. That Your Petitioners are ready and willing to comply with the rules and orders as to giving security for costs and otherwise regulating appeals to the Supreme Court of India.

Your Petitioners therefore pray that Your Lordships will be pleased:-

(a) to grant the certificate that (i) the order from which an appeal is sought involves a claim or question respecting property of the amount or value of more than Rs.20,000/- (ii) the case is a fit one for appeal to the Supreme Court ; and

(b) to admit their petition and to transmit to the Supreme Court of India, under the seal of this Honourable Court, a correct copy of the record so far as is material to the question in dispute herein.

Dated at Bombay this 14th day of March 1950.

Sd/- Gokhale Kale and Co.
Attorneys for the Petitioners.

Petition drawn by
M/s Gokhale Kale & Co.,
Attorneys-for the Petitioners.

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M.495/50 (Ahd)

(Fols. 13)

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CIVIL APPLICATION NO. 285 OF 1950.

(With C.A. Nos. 286 & 287 of 1950)

.....

The Chikodi Motor Transport Co. Chikodi, a firm registered under the Indian Partnership Act, 1932 having its office at Chikodi District Belgaum. ... ... Applicants

versus

The State of Bombay, & others. Opponents

Application praying for issuing a writ of certiorary calling for the records of proceedings relating to the permit for stage carriages of the petitioners and for revising the orders already passed and also for issuing a mandatory injunction against Opponent No.3 directing him to renew the permits for stage carriages of the petitioners for a period of not less than three years.

M/s. P.P. Khambatta & G.V. Gokhale instructed by Messrs. Gokhale, Kale & Co. Attorneys for the Applicants.

Mr. M.P. Amin with the Additional Assistant Government Pleader for Opponent No.1; and

Messrs. Little & Co. Attorneys for all the Opponents.

.....

Coram:- Chagla, C.J. & Gajendragadkar, J.

27th February 1950

Oral Judgment (Per Chagla C.J.) - These are three petitions

submitted by the Petitioners who are carrying on the business of plying motor buses for carriage of passengers on different routes in the southern part of the State of Bombay, and the applications are for Writs of Certiorari, Prohibition, and Mandamus. The main grievance made in these petitions is that Government have issued a notification, being Notification Home Department No.4714/5 dated the 31st of August 1949, expressing their intention to cancel the permits issued to the petitioners without following the procedure laid down under Section 43 of the Motor Vehicles Act, 1939, and particularly without hearing the Petitioners before the notification was issued.

Now, without going into the details as to dates which differ in the three petitions --- the broad facts are that permits were issued for plying motor buses to all the three petitioners. In the case of two of the Petitioners, the permits expired before the 31st of August 1949; in the case of the third Petitioner, the permit expired in January 1950.

We shall deal first with the case of the two petitioners whose permits expired before the 31st of August 1949. The permits having expired, the Petitioners applied for a renewal of the permits; and Government, instead of granting a fresh permit, issued temporary permits under Section 62 of the Motor Vehicles Act. These temporary permits were for short stated periods, and they were renewed from time to time, and the last temporary permits are to expire on the 28th of February this year. It is, therefore, clear that, when the notification of the 31st of August 1949 was issued, there were no subsisting permits in favour of the two Petitioners. Therefore it also follows that Government could not express any intention to cancel permits with reference to these two Petitioners when there were no permits in existence. At the relevant date the 31st of August, 1949, the position was that the Petitioners were carrying on their business under temporary permits, and their applications for permanent permits were pending before the proper authorities. Government have made it clear in their affidavits on these peti-

tions that they are not relying on the notification of the 31st of August 1949 as indeed they could not, because, as we pointed out, the notification could not apply to the Petitioners inasmuch as as they were not in possession of any permenent permits issued by the transport authorities which Government could declare an intention to cancel. Therefore, in our opinion, it is unnecessary to consider whether Government heard the parties interested before the notification of the 31st of August 1949 was issued. If there were permanent permits issued to the Petitioners, and if Government had expressed their intention to cancel these permits under Section 43, then undoubtedly the procedure laid down in that Section would have to be complied with; and if Government had issued a notification without hearing the parties as required by Section 43 then this Court might have interfered and issued a Writ of Certiorari. But as it is not necessary to consider that position at all, inasmuch as no question of hearing the parties arose under Section 43, the applications of the Petitioners with regard to the Writs of Certiorari or Prohibition must fail.

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The other contention that is put forward before us is that in any case the Petitioners are entitled to a Writ of Mandamus against the transport authorities in order to compel them to deal with the Petitioner's applications for permanent permits. Now, before a Writ of Mandamus can issue, there must be a demand for justice and a denial of justice. It is not the Petitioners' case-- and it cannot be their case-- that at any time before the filing of these petitions they ever called upon the transport authorities to deal with and dispose of their applications for renewal of permits. On the contrary, the facts clearly show that the Petitiiners were quite content with the temporary permits which were issued from time to time by the transport authorities under Section 62, and they never pressed their case with regard to the permanent permits. It is not disputed that under Section 62 it is purely discretionary with the transport authorities to issue or not to issue a

temporary permit. Therefore, the transport authorities intimated to the Petitioners that, on the 28th of February 1949, when the last temporary permits expire, no fresh temporary permits would be issued. Therefore, in our opinion, no case also arises for the issue of a Writ of Mandamus.

Mr. Khambatta has contended that if fundamental rights are violated, then under Article 226 of the Constitution it is incumbent upon the Court to issue one of the Writs for which the Petitioners pray in their petitions. It is perfectly true that our Constitution has now given very valuable rights to the citizens in the whole of the State. The right which was exclusive to those residing within the territories that fell under the original jurisdiction of this Court now can be availed of by all the subjects in the whole of the State. But that does not mean that the Court would issue Writs otherwise than in accordance with the judicial principles which are well settled for the issue of these Writs. Writs can only be issued provided a case has been made out for the issue of those writs. The only additional right that the subject has got is that this right can be availed of throughout the State and not merely within the original jurisdiction of the High Court.

The case with regard to the third Petitioner whose permanent permit expired in January 1950 is on the same footing as the case of the other Petitioners. After the permit expired, he applied for a renewal of his permit, and that application is also pending. Although in one sense the notification No.4714/5 dated the 31st of August 1949 might have been effective in the case of the third Petitioner, in fact Government never cancelled his permit and the permit was allowed to run out by efflux of time. Therefore, he also has no grievance if he was not heard when the notification of the 31st of August 1949 was issued.

Therefore, in our opinion, no case has been made out by the petitioners for the issue of any of the Writs asked for by them in the petitions. Therefore, their applications for an interim injunction must fail and must be dismissed

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with costs.

The same result must follow with regard to the rules themselves which have been issued on these petitions. The parties are agreed that we should dispose of the rules at this stage rather than allow the rules to appear at a later stage and make the formal order on the rules. Therefore, the rules will be discharged with costs.

BY ORDER OF THE COURT,

Sd/- S.H. Belavadi.

Deputy Registrar.

True copy

for Deputy Registrar.

The 10th day of October 1950.

K.138. (Fols. 13)

Typed by: B.P. Bhavsar.

Compared by: O.T. Patel.

Read by: V.O. Shah.

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CIVIL APPLICATION NO. 285 of 1950

(With C.A. Nos. 286 & 287 of 1950)

The Chikodi Motor Transport Co. Chikodi, a firm registered under the Indian Partnership Act, 1932 having its office at Chikodi, District Belgaum.) Applicants

versus

The State of Bombay, & others. Opponents

Application praying for issuing a writ of certiorari calling for the records of proceedings relating to the permit for stage carriages of the petitioners and for revising the orders already passed and also for issuing a mandatory injunction against Opponent No.3 directing him to renew the permits for stage carriages of the petitioners for a period of not less than three years.

M/s. P.P. Khambatta & G.V. Gokhale instructed by M/s. Gokhale, Kale & Co. Attorneys for the Applicants.

Mr. M.P. Amin with the Additional Assistant Government Pleader for Opponent No.1; and

M/s. Little & Co. Attorneys for all the Opponents.

Coram:- Chagla, C.J. & Gajendragadkar, J.

27th February 1950.

Oral Judgment (Per Chagla, C.J.)

These are three petitions submitted by the Petitioners who are carrying on the business of plying motor buses for carriage of passengers on different routes in southern part of the State of Bombay, and the applications are for Writs of Certiorari, Prohibition, and Mandamus. The main grievance made in these petitions is that Government have issued a notification, being Notification Home Department No.4714/5 dated the 31st of August 1949, expressing their intention to cancel the permits issued to the petitioners without following the procedure laid down under Section 43 of the Motor Vehicles Act, 1939, and particularly without hearing the Petitioners before the notification was issued.

Now, without going into the details as to dates which differ in the three petitions the broad facts are that permits were issued for plying motor buses to all the three petitioners. In the case of two of the Petitioners, the permits expired before the 31st of August 1949; in the case of the third Petitioner, the permit expired in January 1950.

We shall deal first with the case of the two petitioners whose permits expired before the 31st of August 1949. The permits having expired, the Petitioners applied for a renewal of the permits; and Government, instead of granting a fresh permit, issued temporary permits under Section 62 of the Motor Vehicles Act. These temporary permits were for short stated periods, and they were renewed from time to time, and the last temporary permits are to expire on the 28th of February this year. It is, therefore, clear that, when the notification of the 31st of August 1949 was issued, there were no subsisting permits in favour of the two Petitioners. Therefore it also follows that Government could not express any intention to cancel permits with reference to these two Petitioners when there

were no permits in existence. At the relevant date the 31st of August, 1949, the position was that the Petitioners were carrying on their business under temporary permits, and their applications for permanent permits were pending before the proper authorities. Government have made it clear in their affidavits on these petitions that they are not relying on the notification of the 31st of August 1949-- as indeed they could not, because, as we pointed out, the notification could not apply to the Petitioners, inasmuch as they were not in possession of any permanent permits issued by the transport authorities which Government could declare an intention to cancel. Therefore, in our opinion, it is unnecessary to consider whether Government heard the parties interested before the notification of the 31st of August 1949 was issued. If there were permanent permits issued to the Petitioners, and if Government had expressed their intention to cancel these permits under Section 43, then undoubtedly the procedure laid down in that Section would have to be complied with; and if Government had issued a notification without hearing the parties as required by Section 43 then this Court might have interfered and issued a Writ of Certiorari. But as it is not necessary to consider that position at all, inasmuch as no question of hearing the parties arose under Section 43, the applications of the Petitioners with regard to the Writs of Certiorari or Prohibition must fail.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

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permits. On the contrary, the facts clearly show that the Petitioners were quite content with the temporary permits which were issued from time to time by the transport authorities under Section 62, and they never pressed their case with regard to the permanent permits. It is not disputed that under Section 62 it is purely discretionary with the transport authorities to issue or not to issue a temporary permit. Therefore, the transport authorities intimated to the Petitioners that, on the 28th of February 1949, when the last temporary permits expire, no fresh temporary permits would be issued. Therefore, in our opinion, no case also arises for the issue of a Writ of Mandamus.

Mr. Khambatta has contended that if fundamental rights are violated, then under Article 226 of the Constitution it is incumbent upon the Court to issue one of the Writs for which the Petitioners pray in their petitions. It is perfectly true that our Constitution has now given very valuable rights to the citizens in the whole of the State. The right which was exclusive to those residing within the territories that fell under the original jurisidction of this Court now can be availed of by all the subjects in the whole of the State. But that does not mean that the Court would issue Writs otherwise than in accordance with the judicial principles which are well settled for the issue of these writs. Writs can only be issued provided a case has been made out for the issue of those writs. The only additional right that the subject has got is that this right can be availed of throughout the State and not merely within the original jurisdiction of the High Court.

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Therefore, in our opinion, no case has been made out by the petitioners for the issue of any of the Writs asked for by them in the petitions. Therefore, their applications for an interim injunction must fail and must be dismissed with costs.

The same result must follow with regard to the rules themselves which have been issued on these petitions. The parties are agreed that we should dispose of the rules at this stage rather than allow the rules to ~~appeal~~ appear at a later stage and make the formal order on the rules. Therefore, the rules will be discharged with costs.

By order of the Court,

Sd/- S.H. BELAVADI.

Deputy Registrar.

True copy

for Deputy Registrar.

The 19th day of October 1950.

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